

1 RONALD RUS, #67369
rrus@rusmiliband.com
2 JOEL S. MILIBAND, #77438
jmiliband@rusmiliband.com
3 LEO J. PRESIADO, #166721
lpresiado@rusmiliband.com
4 M. PETER CRINELLA, #145157
pcrinella@rusmiliband.com
5 RUS, MILIBAND & SMITH
6 A Professional Corporation
7 Seventh Floor
8 2211 Michelson Drive
Irvine, California 92612
9 Telephone: (949) 752-7100
Facsimile: (949) 252-1514

10 Attorneys for Plaintiff
MICHAEL R. DANZI

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

16 | MICHAEL R. DANZI, an individual,)

CASE NO. SA CV 09-0039 CJC
(RNBx)

Plaintiff,

VS.

114

HIGH LAND CAPITAL HELD BY READBANK, SSB

DEMAND FOR JURY TRIAL

DEMAND FOR JURY TRIAL

DEMAND FOR JURY TRIAL

Judge: Honorable Cormac J. Carney

Defendants.

27 NEXBANK, SSB, a Texas chartered
savings bank,)
)

Counterclaimant,

1 v.)
2 MICHAEL R. DANZI, an individual,)
3 Counterdefendant.)
4 _____)
5 HIGHLAND CRUSADER)
6 OFFSHORE PARTNERS, L.P., a)
7 Bermuda limited partnership;)
8 HIGHLAND CREDIT STRATEGIES)
9 MASTER FUND, L.P., a Bermuda)
10 limited partnership,)
11 Counterclaimants,)
12 v.)
13 MICHAEL R. DANZI, an individual,)
14 Counterdefendant.)
15 _____)
16 Plaintiff and Counterdefendant Michael R. Danzi ("Plaintiff") for his
17 answer to the Counterclaim filed by Defendant and Counterclaimant NexBank,
18 SSB ("NexBank"), admits, denies and alleges as follows:
19
20 **ANSWER**
21
22 **I. THE PARTIES, JURISDICTION, AND VENUE**
23
24 1. Plaintiff is without knowledge or information sufficient to
25 form a belief as to the allegations in paragraph 1 and, therefore, denies the
26 allegations.
27
28 2. Plaintiff admits that he is an individual residing in the County
of Orange, State of California.
29
30 3. Admit.
31
32 **II. GENERAL ALLEGATIONS**
33
34 4. Admit.
35
36 5. Admit.
37
38 / / /
39

1 6. Plaintiff admits that he executed the document attached as
2 Exhibit "2." Plaintiff is without knowledge or information sufficient to form a
3 belief as to the truth of the remaining allegations contained in paragraph 6 of the
4 Counterclaim and on that basis denies the remaining allegations contained
5 therein.

6 7. Plaintiff admits that NexBank sent a letter dated January 8,
7 2009. Plaintiff denies that any "Events of Default" (as defined in the Credit
8 Agreement) have occurred. Plaintiff is without knowledge or information
9 sufficient to form a belief as to the truth of the remaining allegations contained in
10 paragraph 7 of the Counterclaim and on that basis denies the remaining
11 allegations contained therein.

12 8. Plaintiff admits NexBank filed a lawsuit in Texas. Plaintiff
13 denies that any "Events of Default" (as defined in the Credit Agreement) have
14 occurred. Plaintiff is without knowledge or information sufficient to form a
15 belief as to the truth of the remaining allegations contained in paragraph 8 of the
16 Counterclaim and on that basis denies the remaining allegations contained
17 therein.

18 9. Plaintiff admits that NexBank sent a letter dated February 20,
19 2009, and that NexBank filed the Texas lawsuit. Plaintiff denies that any
20 "Events of Default" (as defined in the Credit Agreement) have occurred.
21 Plaintiff is without knowledge or information sufficient to form a belief as to the
22 truth of the remaining allegations contained in paragraph 9 of the Counterclaim
23 and on that basis denies the remaining allegations contained therein.

24 10. Plaintiff admits that Defendants in the Texas lawsuit filed a
25 Plea in Abatement. Except as expressly admitted above, Plaintiff denies
26 generally and specifically the allegations contained in paragraph 10 of the
27 Counterclaim.

28 11. Admit.

1 12. Plaintiff admits that the Court determined that it had
2 jurisdiction over this matter and that Exhibit "7" is a copy of the Court's Order
3 denying his Emergency Application for a Temporary Restraining Order. Plaintiff
4 is without knowledge or information sufficient to form a belief as to the truth of
5 the remaining allegations contained in paragraph 12 of the Counterclaim and on
6 that basis denies the remaining allegations contained therein.

7 **CAUSE OF ACTION**

8 **(All Writs Act, 28 U.S.C. § 1651)**

9 13. Plaintiff incorporates by reference his responses as set forth in
10 paragraphs 1 through 12 above, as though set forth herein in full.

11 14. Plaintiff admits that the Court has determined that it has
12 jurisdiction over this matter and denied his Emergency Application for a
13 Temporary Restraining Order. Plaintiff denies that he seeks to interfere with,
14 and frustrate, the exercise of jurisdiction of this Court and further denies that he
15 sought identical relief denied by this Court in the Texas Lawsuit. Plaintiff is
16 without knowledge or information sufficient to form a belief as to the truth of the
17 remaining allegations contained in paragraph 14 of the Counterclaim and on that
18 basis denies the remaining allegations contained therein.

19 15. Denied.

20 16. Plaintiff admits that the Court has determined that it has
21 jurisdiction over this matter and denied his Emergency Application for a
22 Temporary Restraining Order. Except as expressly admitted above, Plaintiff
23 denies generally and specifically the allegations contained in paragraph 16 of the
24 Counterclaim.

25 ///

26 ///

27 ///

28 ///

**FOR HIS AFFIRMATIVE DEFENSES, THIS
ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

5 17. NexBank's Counterclaim fails to allege facts sufficient to state
6 a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

18. NexBank's Counterclaim is barred, in whole or in part, by the doctrine of waiver.

THIRD AFFIRMATIVE DEFENSE

11 19. NexBank's Counterclaim is barred, in whole or in part, by the
12 doctrine of estoppel.

FORTH AFFIRMATIVE DEFENSE

14 20. NexBank's Counterclaim is barred, in whole or in part, by the
15 doctrine of unclean hands.

FIFTH AFFIRMATIVE DEFENSE

17 21. NexBank's Counterclaim is barred, in whole or in part, by
18 virtue of the fact that NexBank has not been, and will not be, harmed by the
19 conduct alleged in the Counterclaim.

SIXTH AFFIRMATIVE DEFENSE

21 22. NexBank's Counterclaim is barred, in whole or in part, by
22 virtue of the fact that the claim asserted therein is moot in that NexBank has
23 already performed the act (i.e., sale of Plaintiff's interest in Legacy
24 Pharmaceuticals International, LLC) that Plaintiff allegedly sought to enjoin.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

- A. That NexBank take nothing by its Counterclaim;
- B. That Plaintiff be awarded his costs of suit;

1 C. That Plaintiff have such other, further and different relief as
2 this Court deems just and proper.

3

4 DATED: March 26, 2009

5 RUS, MILIBAND & SMITH
6 A Professional Corporation

7 By: 

8 RONALD RUS
9 Attorneys for Plaintiff
10 MICHAEL R. DANZI

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

PROOF OF SERVICE

2 STATE OF CALIFORNIA) ss.
3 COUNTY OF ORANGE)

5 I am employed in the County of Orange, State of California. I am over
the age of 18 and not a party to the within action; my business address is 2211
Michelson Drive, Seventh Floor, Irvine, California 92612.

On March 26, 2009, I served the foregoing document(s) described as
ANSWER TO COUNTERCLAIM FILED BY NEXBANK, SSB on the interested
parties in this action by placing a true copy thereof enclosed in sealed envelopes
addressed as follows:

SEE ATTACHED SERVICE LIST

11 — (By Mail) As follows: I am "readily familiar" with the firm's practice of
12 collection and processing correspondence for mailing. Under that
13 practice, it would be deposited with U.S. Postal Service on that same day
14 with postage thereon fully prepaid at Irvine, California, in the ordinary
course of business. I am aware that on motion of the party served, service
is presumed invalid if postal cancellation date or postage meter date is
more than one day after date of deposit for mailing in affidavit.

15 — (By Facsimile) As follows: I caused the above-referenced document(s) to
16 be transmitted to the above-named persons.

17 — (By Overnight Mail) As follows: I caused the above-referenced
18 document(s) to be delivered to the above-named persons by overnight
19 delivery service, morning delivery.

20 — (By Personal Service) As follows: By hand to the office of the addressee
21 noted on the attached service list.

22 — (By Electronic Transmission (E-Mail)) I e-mailed the above-referenced
23 document(s) as indicated in the parties listed above.

24 ✓ (By CM/ECF) to registered ECF Users pursuant to General Order 07-08.

25 Executed on **March 26, 2009**, at Irvine, California.

— (State) I declare under penalty of perjury under the laws of the State of
California that the above is true and correct.

— (Federal) I declare that I am employed in the office of a member of the
bar of this Court at whose direction the service was made.


JEANNIE MENDEZ

1 **SERVICE LIST**

2 Tom Chen, Esq.
3 Haynes and Boone, LLP
4 18200 Von Karman, Suite 725
5 Irvine, CA 92612
6 Telephone: (949) 752-7040
7 Facsimile: (949) 752-7049
8 Email: tchen@haynesboone.com

9
10 Clark S. Stone, Esq.
11 Jason M. Gonder, Esq.
12 Haynes and Boone, LLP
13 2033 Gateway Place, Suite 400
14 San Jose, CA 95110
15 Telephone: (408) 392-9250
16 Facsimile: (408) 392-9262
17 Email: cstone@haynesboone.com

18
19 Werner A. Powers, Esq.
20 R. Thaddeus Behrens, Esq.
21 Haynes and Boone, LLP
22 2323 Victory Avenue, Suite 700
23 Dallas, TX 75219
24 Telephone: (214) 651-5000
25 Facsimile: (214) 200-0672
26 Email: werner.powers@haynesboone.com

27
28